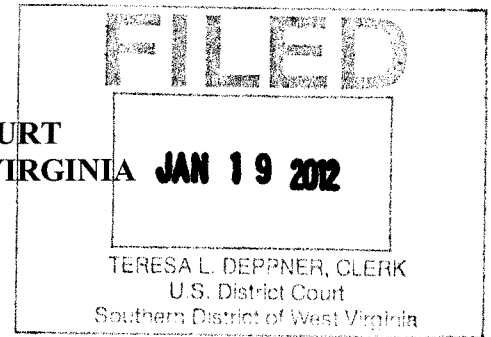


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



ZACHARY SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 2:12-cv-00095

JOSHUA B. MILLER, JOHN  
J. MILLER, MYRA MILLER, and  
THIS AND THAT BAR & GRILL,  
LLC D/B/A UPTOWN GIRLS

Defendants.

**COMPLAINT**

COMES NOW Zachary Smith, Plaintiff herein and hereby files this Complaint against Defendants, Joshua B. Miller, John J. Miller, Myra Miller and This and That Bar & Grill, LLC d/b/a Uptown Girls, showing the Court as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Zachary Smith, is a citizen and resident of the state of Kentucky.
2. Defendant, Joshua B. Miller, is a citizen and resident of the state of West Virginia.
3. Defendants, John J. Miller and Myra Miller, are husband and wife, the parents of Joshua B. Miller and citizens and residents of the state of West Virginia.
4. Defendant, This and That Bar & Grill, LLC doing business as Uptown Girls (hereinafter called "Uptown Girls"), is a corporation with its principle place of business in West Virginia and is licensed to do business and doing business in West Virginia.

5. Jurisdiction and venue are proper in the United States District Court for the Southern District of West Virginia and founded on diversity of citizenship and amount. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332.

### **COUNT I**

6. Plaintiff reasserts paragraphs numbered 1-5 of the Complaint as if stated verbatim herein.

7. On or about October 13, 2011, Plaintiff, Zachary Smith was a back seat passenger in a motor vehicle owned by John J. Miller and Myra Miller and being operated by Joshua B. Miller south on U.S. Route 119 in or near Borderland, Mingo County, West Virginia. During that time, Joshua B. Miller negligently and unlawfully operated the motor vehicle causing it to leave the roadway, collide with an embankment, go airborne and then roll over several times before coming to rest on its top resulting in the Plaintiff sustaining serious and permanent injuries and damages.

8. As the direct and proximate result of the negligence of Defendant, Joshua B. Miller, the Plaintiff, Zachary Smith, sustained personal injuries and damages; sustained permanent injuries; incurred and will incur in the future hospital and medical bills and expenses; incurred and will incur in the future lost wages; incurred and will incur in the future loss of earning capacity; incurred and will incur in the future loss of enjoyment of life; sustained and will sustain in the future pain of the body and mind; and was otherwise seriously and permanently injured.

**COUNT II**

9. Plaintiff reasserts paragraphs numbered 1-8 of the Complaint as if stated verbatim herein.

10. At the time of the hereinabove described wreck, Defendant, Joshua B. Miller, was operating his parents' motor vehicle while under the influence of alcohol and with gross, reckless or wanton negligence and reckless disregard of the safety of others resulting in the wreck and the Plaintiff sustaining serious and permanent injuries and damages.

11. As the direct and proximate result of Defendant, Joshua B. Miller's, gross, reckless or wanton negligence and reckless disregard of the safety of others, the Plaintiff, Zachary Smith, sustained personal injuries and damages; sustained permanent injuries; incurred and will incur in the future hospital and medical bills and expenses; incurred and will incur in the future lost wages; incurred and will incur in the future loss of earning capacity; incurred and will incur in the future loss of enjoyment of life; sustained and will sustain in the future pain of the body and mind; and was otherwise seriously and permanently injured.

**COUNT III**

12. Plaintiff reasserts paragraphs numbered 1-11 of the Complaint as if stated verbatim herein.

13. Defendants, John J. Miller and Myra Miller, owned the motor vehicle their son, Joshua B. Miller, was operating at the time of the hereinabove described wreck and negligently and recklessly provided their motor vehicle to Joshua B. Miller to operate before and at the time of the wreck described herein.

14. Defendants, John J. Miller and Myra S. Miller, under the circumstances, knew or should have known that Joshua B. Miller was incompetent and/or unfit to drive their motor

vehicle before and at the time of the wreck described hereinabove.

15. As the direct and proximate result of the negligence of Defendants, John J. Miller and Myra Miller, the Plaintiff, Zachary Smith, sustained personal injuries and damages; sustained permanent injuries; incurred and will incur in the future hospital and medical bills and expenses; incurred and will incur in the future lost wages; incurred and will incur in the future loss of earning capacity; incurred and will incur in the future loss of enjoyment of life; sustained and will sustain in the future pain of the body and mind; and was otherwise seriously and permanently injured.

#### **COUNT IV**

16. Plaintiff reasserts paragraphs numbered 1-15 of the Complaint as if stated verbatim herein.

17. On and before October 13, 2011, Defendant, Uptown Girls, owed a duty under West Virginia Code § 60-7-12, and § 60-8-20 to not sell alcoholic liquors, wine, or beer to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs.

18. On and before October 13, 2011, Defendant, Uptown Girls, owed a duty under West Virginia Code § 60-7-12 as licensed private club on the licensee's premises to not sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, wine, or beer, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of alcoholic liquors, wine, or beer or the use of drugs.

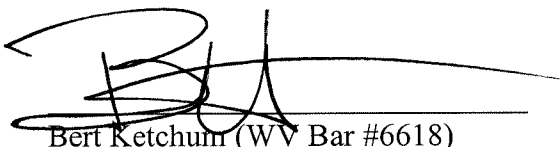
19. On October 13, 2011, before the wreck described hereinabove, Defendant, Uptown Girls, its agents, servants or employees, negligently and unlawfully sold alcoholic

liquors, wine, or beer to Defendant, Joshua B. Miller, who was physically incapacitated due to the consumption of alcoholic liquor in violation of a statute which is *prima facie* evidence of negligence.

20. As the direct and proximate result of the negligent and unlawful acts of the Defendant, Uptown Girls, its agents, servants or employees, Plaintiff, Zachary Smith, sustained personal injuries and damages; sustained permanent injuries; incurred and will incur in the future hospital and medical bills and expenses; incurred and will incur in the future lost wages; incurred and will incur in the future loss of earning capacity; incurred and will incur in the future loss of enjoyment of life; sustained and will sustain in the future pain of the body and mind; and was otherwise seriously and permanently injured.

WHEREFORE, Plaintiff demands judgment against Defendants, Joshua B. Miller, John J. Miller, Myra Miller and Uptown Girls, jointly and severally, in an amount which will reasonably compensate Plaintiff, Zachary Smith, for his injuries and damages, punitive damages, attorney fees, court costs, plus prejudgment interest and interest on any verdict rendered herein.

A trial by jury is demanded.

A handwritten signature in black ink, appearing to read 'Bert Ketchum', with a long horizontal line extending to the right.

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